

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

**Cassie Pointer and
Darrell Thacker, individuals**

Plaintiffs,

VS.

**Verla Varnell Barrett, individually
and d/b/a Big V Construction,**

Defendant.



















CASE NO. _____

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

INTRODUCTION

1. This is a representative action for unpaid wages and overtime brought pursuant to the Fair Labor Standards Act, (FLSA) 29 U.S.C. § 216(b), and a claim for retaliation.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 201, et seq, 28 U.S.C. § 1331 and 1337, diversity jurisdiction and the doctrine of pendant jurisdiction.

PARTIES

3. Plaintiffs are residents of Briscoe County and Brown County, Texas, and, at times material worked for Big V Construction, at or from its facility in Quitaque, Briscoe County, Texas. They bring this action on behalf of themselves and as representative of similarly situated workers who file consents to join in this action. The acts, practices and events complained of occurred, at least in substantial part, in the Northern District of Texas, Amarillo Division.

4. Defendant Verla Varnell Barrett, individually and d/b/a Big V Construction (“Barrett”), may be served by serving Verla Varnell Barrett, 314 Anderson St., Quitaque, Texas 79255, and is engaged in the business of trimming trees, brush and the like from utilities highlines, climbing highline poles and or related services for commerce in the State of Texas. Barrett maintains its principal place of business in Quitaque, Texas. Barrett is personally liable for the acts of Big V because she controls said d/b/a and makes the day to day decisions about employees payroll matters and rates of pay.

FACTS

5. Plaintiffs are or were employed by the Defendant Barrett at her facility in Quitaque, Texas, during the past three (3) years. Verla Varnell Barrett is the individual who controls Big V, and who controls the day to day operations and makes decisions about payroll matters and rates of pay concerning the employees of Big V.

6. Barrett, as well as her agents, employees and representatives combined, conspired and acted through a concert of action to avoid paying overtime to its hourly employees and to retaliate against and punish those employees who complained about such treatment. It is believed the plaintiff, as well as others, including but not limited to the other non-exempt hourly workers, in the course of their employment with Barrett, and during existence of this continuing conspiracy, participated in the combination, concert of action and conspiracy, whichever, hereinafter alleged and are co-conspirators.

7. During the time of Plaintiffs’ employment Defendant, Barrett failed to pay Plaintiffs and others similarly situated, actual overtime for hours of work they performed in

excess of 40 hours per week as required by the Fair Labor Standards Act ("FLSA"). Barrett has told her employees that Big V does not pay overtime.

8. The failure to pay plaintiff and others similarly situated their lawful overtime wages under the Fair Labor Standards Act included paying all overtime hours at the regular rate, and was paid as regular time, not time and a half as required by the FLSA. In the case of "storm time" Barrett was required to pay the employees "double time" but paid only time and one half. Barrett has contracted with utility companies to be reimbursed for double time for her workers during storm time but only pays her employees time and one half.

9. Similarly situated individuals working in the production of goods or services for commerce at the Defendants' facility in Quitaque, Texas, and surrounding counties, were deprived of their lawful overtime wages under the Fair Labor Standards Act in the same manner as Plaintiffs. This action is also brought on behalf of those similarly situated workers.

10. The Defendant's failure to pay Plaintiffs and similarly situated workers their lawful wages required by the Fair Labor Standards Act was willful. Despite her knowledge that time spent performing their daily activities for the benefit of Barrett, particularly those hours spent working over forty (40) hours per week, constituted work and is compensable time the Defendant failed and refused to pay overtime. The Defendant acting in concert with her employees at Barrett, have threatened to fire employees in retaliation whenever an employee complained or complains of the non-payment of proper overtime, and in at least one case has fired an employee who complained about Barrett's failure to properly pay overtime. The foregoing activities performed by the workers are compensable time under the FLSA. Defendant took no steps to compensate workers at or through its facility in the State of Texas for this time

and, on information and belief, took no steps to compensate workers at its facility or for work directed out of that facility, for this time in violation of the law.

Representative Action

11. Plaintiffs bring action on behalf of themselves and all similarly situated employees of Big V Construction, wholly owned by Burnett. Plaintiffs request that notice be issued to those employees informing them of their right to file consents to join in this action.

CAUSES OF ACTION

**COUNT I
FLSA**

Cassie Pointer and Darrell Thacker, for their Count I of this Complaint, inclusive of the foregoing, alleges and states:

12. Plaintiffs and similarly situated workers are entitled to relief pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act for damages, unpaid wages, reasonable attorneys fees and costs.

**COUNT II
Tort of Retaliation for Complaining About
Overtime and Working Conditions**

In addition to the foregoing and as Count II of this Complaint, Plaintiffs reallege herein as though repeated in full each allegation contained in paragraphs 1 through 13, inclusive and, further, Plaintiffs allege and state:

13. This Court has jurisdiction of Count II under Section 215(a)(3) of Title 29 U.S.C. and Section 1332 U.S.C. (28 U.S.C.A., Section 1332) and the principles of pendant jurisdiction. The matter in controversy exceed the sum of \$75,000.00, it is believed, exclusive of interest and cost.

14. In 2009 it is believed Barrett fired at least one worker, Cassie Pointer, for complaining about working conditions and the company's refusal to pay overtime and it is believed, has retaliated against others for doing the same.

15. Big V, at the direction of Barrett and acting through its management regularly discriminate against employees by placing them in unfavorable positions at work as a means of punishment for complaining about unpaid overtime, among other working condition complaints. This behavior by the Defendant violates the FLSA.

16. Plaintiffs have been damaged as a result, both actual and punitive damages, reasonable attorney fees and cost for which he herein sues.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray that this Court:

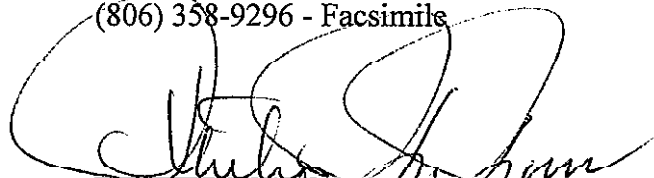
- a. Issue notice to all similarly situated employees of Barrett d/b/a Big V informing them of their right to file consents to join in this action;
- b. Declare that Plaintiffs and similarly situated workers who file consents to join this suit are entitled to pay for all of their FLSA-defined hours of work, including all hours worked over 40 hours in one week, working storm time.
- c. Awarding Plaintiffs and similarly situated workers who file consents to join in this suit, their unpaid regular hourly wages for hours of work up to 40 hours per week and their unpaid overtime for all hours of work in excess of 40 hours per week, an equal amount of liquidated damages, attorneys fees and costs of suit and such other relief as this Court deems just and proper.
- d. Award Plaintiffs and similarly situated workers who file consents damages and costs for retaliation and outrageous conduct.
- e. Damages and attorney fees for causes under pendant jurisdiction as pled.
- f. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Mark W. Laney, SBN 11892500
LANEY & MYATT LAW FIRM
600 Ash Street
Plainview, TX 79072-8093
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and

LAW OFFICES OF PHILIP R. RUSS
2700 S. Western, Suite 1200
Amarillo, Texas 79109
(806) 358-9293 - Telephone
(806) 358-9296 - Facsimile



Philip R. Russ Bar No. 17406000

JURY DEMAND

Plaintiffs herewith demand a trial by jury.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Cassie Pointer and Darrell Thacker, individuals

(b) County of Residence of First Listed Plaintiff Briscoe
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Philip R. Russ, 2700 S. Western St., Suite 1200.
Amarillo, TX 79109 (806) 358-9293

DEFENDANTS

Verla Varnell Barrett d/b/a Big V Construction

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C., Sec. 201, et seq

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 50,000 +

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____